

AMENDED IN SENATE JUNE 15, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 459

Introduced by Assembly Member Bonnie Lowenthal

February 24, 2009

An act to amend Sections 2104, 2106, and 2107 of the Family Code, relating to dissolution.

LEGISLATIVE COUNSEL'S DIGEST

AB 459, as amended, Bonnie Lowenthal. Dissolution: disclosure.

Existing law requires each party to a proceeding for dissolution of marriage or legal separation of the parties to serve on the other party a preliminary declaration of disclosure of assets, as specified, and a final declaration of disclosure, as specified, unless service of the final disclosure is waived. Existing law requires each party to serve a preliminary declaration of disclosure after or concurrently with service of the petition for dissolution or nullity of marriage, or legal separation of the parties. If a party fails to serve a preliminary or final declaration of disclosure, as specified, or fails to provide information required in those declarations with sufficient particularity, if the other party has served the respective declaration of disclosure, and if the noncomplying party also fails to comply with a request for the preparation of the appropriate declaration of disclosure or further particularity, existing law authorizes the complying party to file a motion to compel a further response or for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure.

Existing law generally prohibits entry of judgment with respect to the parties' property rights unless each party, or the attorney for that party, has executed and served a copy of the final declaration of disclosure and current income and expense declaration. Existing law requires a court to set aside a judgment when the parties have failed to comply with all disclosure requirements, as specified.

This bill would add, as an additional option that a complying party may pursue if the noncomplying party fails to comply with the request described above, the option to file a motion showing good cause to grant the complying party's voluntary waiver of receipt of the noncomplying party's disclosure, as specified. If that motion is granted, the bill would require the court to set aside a judgment only at the request of the complying party, *unless the motion is based on actual fraud or perjury, as specified*. The bill would make related and conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2104 of the Family Code is amended to
2 read:
- 3 2104. (a) Except by court order for good cause, as provided
4 in Section 2107, after or concurrently with service of the petition
5 for dissolution or nullity of marriage or legal separation of the
6 parties, each party shall serve on the other party a preliminary
7 declaration of disclosure, executed under penalty of perjury on a
8 form prescribed by the Judicial Council. The commission of perjury
9 on the preliminary declaration of disclosure may be grounds for
10 setting aside the judgment, or any part or parts thereof, pursuant
11 to Chapter 10 (commencing with Section 2120), in addition to any
12 and all other remedies, civil or criminal, that otherwise are available
13 under law for the commission of perjury.
- 14 (b) The preliminary declaration of disclosure shall not be filed
15 with the court, except on court order. However, the parties shall
16 file proof of service of the preliminary declaration of disclosure
17 with the court.
- 18 (c) The preliminary declaration of disclosure shall set forth with
19 sufficient particularity, that a person of reasonable and ordinary
20 intelligence can ascertain, all of the following:

1 (1) The identity of all assets in which the declarant has or may
2 have an interest and all liabilities for which the declarant is or may
3 be liable, regardless of the characterization of the asset or liability
4 as community, quasi-community, or separate.

5 (2) The declarant's percentage of ownership in each asset and
6 percentage of obligation for each liability where property is not
7 solely owned by one or both of the parties. The preliminary
8 declaration may also set forth the declarant's characterization of
9 each asset or liability.

10 (d) A declarant may amend his or her preliminary declaration
11 of disclosure without leave of the court. Proof of service of any
12 amendment shall be filed with the court.

13 (e) Along with the preliminary declaration of disclosure, each
14 party shall provide the other party with a completed income and
15 expense declaration unless an income and expense declaration has
16 already been provided and is current and valid.

17 SEC. 2. Section 2106 of the Family Code is amended to read:

18 2106. Except as provided in subdivision (d) of Section 2105,
19 Section 2110, or absent good cause as provided in Section 2107,
20 no judgment shall be entered with respect to the parties' property
21 rights without each party, or the attorney for that party in this
22 matter, having executed and served a copy of the final declaration
23 of disclosure and current income and expense declaration. Each
24 party, or his or her attorney, shall execute and file with the court
25 a declaration signed under penalty of perjury stating that service
26 of the final declaration of disclosure and current income and
27 expense declaration was made on the other party or that service
28 of the final declaration of disclosure has been waived pursuant to
29 subdivision (d) of Section 2105 or in Section 2110.

30 SEC. 3. Section 2107 of the Family Code is amended to read:

31 2107. (a) If one party fails to serve on the other party a
32 preliminary declaration of disclosure under Section 2104 or a final
33 declaration of disclosure under Section 2105, or fails to provide
34 the information required in the respective declarations with
35 sufficient particularity, and if the other party has served the
36 respective declaration of disclosure on the noncomplying party,
37 the complying party may, within a reasonable time, request
38 preparation of the appropriate declaration of disclosure or further
39 particularity.

1 (b) If the noncomplying party fails to comply with a request
2 under subdivision (a), the complying party may do one or more
3 of the following:

4 (1) File a motion to compel a further response.

5 (2) File a motion for an order preventing the noncomplying
6 party from presenting evidence on issues that should have been
7 covered in the declaration of disclosure.

8 (3) File a motion showing good cause for the court to grant the
9 complying party's voluntary waiver of receipt of the noncomplying
10 party's preliminary declaration of disclosure pursuant to Section
11 2104 or final declaration of disclosure pursuant to Section 2105.
12 The voluntary waiver does not affect the rights enumerated in
13 subdivision (d).

14 (c) If a party fails to comply with any provision of this chapter,
15 the court shall, in addition to any other remedy provided by law,
16 impose money sanctions against the noncomplying party. Sanctions
17 shall be in an amount sufficient to deter repetition of the conduct
18 or comparable conduct, and shall include reasonable attorney's
19 fees, costs incurred, or both, unless the court finds that the
20 noncomplying party acted with substantial justification or that
21 other circumstances make the imposition of the sanction unjust.

22 (d) Except as otherwise provided in this subdivision, if a court
23 enters a judgment when the parties have failed to comply with all
24 disclosure requirements of this chapter, the court shall set aside
25 the judgment. The failure to comply with the disclosure
26 requirements does not constitute harmless error. If the court granted
27 the complying party's voluntary waiver of receipt of the
28 noncomplying party's preliminary declaration of disclosure
29 pursuant to paragraph (3) of subdivision (b), the court shall set
30 aside the judgment only at the request of the complying party,
31 *unless the motion to set aside the judgment is based on one of the*
32 *following:*

33 (1) *Actual fraud if the defrauded party was kept in ignorance*
34 *or in some other manner was fraudulently prevented from fully*
35 *participating in the proceeding.*

36 (2) *Perjury, as defined in Section 118 of the Penal Code, in the*
37 *preliminary or final declaration of disclosure, in the waiver of the*
38 *final declaration of disclosure, or in the current income and*
39 *expense statement.*

1 (e) Upon the motion to set aside judgment, the court may order
2 the parties to provide the preliminary and final declarations of
3 disclosure that were exchanged between them. Absent a court order
4 to the contrary, the disclosure declarations shall not be filed with
5 the court and shall be returned to the parties.

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